

ORIGINAL

United States Court
Southern District of Texas
FILED
NOV 28 2003
Michael N. Milby, Clerk

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Member Brian Dabrowski

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re ENRON CORPORATION SECURITIES) Class Action
LITIGATION)

) MDL No. 1446

This Document Relates To:

) Civil No.: H-01-3624
) (Consolidated)

MARK NEWBY, et al.,
Plaintiffs,

vs.

ENRON CORP., et al.,
Defendants.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, et al., individually
and on behalf of all others
similarly situated,

Plaintiffs,

vs.

KENNETH L. LAY, et al.,
Defendants.

) Date: December 11, 2003
) Time: 2:00 p.m.
) Courtroom: Hon. Melinda
) Harmon

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF OPPOSITION TO LEAD COUNSEL'S APPLICATION FOR
PARTIAL REIMBURSEMENT OF EXPENSES

1 Plaintiff class member/objector Brian Dabrowski objects to
2 class counsel's request for a reimbursement of expenses in the
3 amount of \$4,841,820.56 because there is a lack of evidentiary
4 support in the record to justify such a large reimbursement
5 request.
6

7 [I]t does not appear that [the court] made any
8 particularized inspection of class and special counsel's
9 expense request. A simple rubber stamp is
10 insufficient.... Allowing a several thousand dollar
11 payment for photocopying expenses without looking into
12 the cost per photocopy is exemplary of an impermissible
13 laxity. On remand, the district court should cast a
14 strict eye toward counsel's expense submissions.
15 (*Bowling, et al. v. Pfizer, Inc., et al.*, 132 F.3d 1147,
16 1152 (6th Cir. 1998) (emphasis added)).

17 The Manual for Complex Litigation states:

18 To the extent not previously submitted with the motion,
19 time and expense records must be submitted in manageable
20 and comprehensible form.... (MANUAL FOR COMPLEX LITIGATION
21 3d, *Supporting Documentation and Evidence*, § 24.223, at
22 198).

23 Class counsel have not produced expense records, only
24 categories of claimed expenses. Objector believes that it is
25 simply impossible for this Court to determine the reasonableness
26 of those categorized requests based upon the evidentiary record to
27 date. The court's attention is directed in this regard to *In re*
28 *Brooktree Sec. Litig.*, 915 F. Supp. 193 (S.D. Cal. 1996),
particularly the section at pages 200 and 201, entitled "Expenses
and Costs."

///
28

1 Objector believes that to approve such a large request on the
2 current record is inconsistent with the Court's fiduciary
3 responsibilities¹ to the class, to the class action process, and
4 the general public:
5

6 [T]he district court, called upon to make awards of ...
7 expenses in such a case, functions as a quasi-fiduciary
8 to safeguard the corpus of the fund for the benefit of
9 the plaintiff class. (*In re Fidelity/Micron Securities*,
10 167 F.3d 735, 736 (1st Cir. 1999), citing *Cook v.*
11 *Niedert*, 142 F.3d 1004, 1011 (7th Cir. 1998)).

12 Objector believes that the declaration by class counsel
13 supporting a categorization of costs with no backup information in
14 terms of invoices, bills or and cancelled checks cannot support a
15 cost reimbursement request in excess of this magnitude. While it
16 might be acceptable for cost reimbursements in the \$50,000 to
17 \$100,000 range, a cost reimbursement in excess of \$4 million
18 demands supporting documentation.

19 Consequently, a reviewing court has the right, if not
20 the obligation, to view skeptically efforts by attorneys
21 to charge substantial expenses to that account.

22

23 For another thing, lawyers are not necessarily entitled
24 to the quantum of reimbursement to which they aspire.
25 To the contrary, they must establish the reasonableness
26 of their requests. In the course of that exercise, the
27 trial court may insist on examining particulars, such as
28 receipts and logs, so that it can determine whether the
claimed expenses were reasonable, necessary, and
incurred for the benefit of the class.

1 For the Court to agree to award such a large amount of money
2 based upon this evidentiary record would send all the wrong
3 signals to the class action bar. It would only encourage class
4 action lawyers to exploit fee reimbursement requests at the
5 expense of class members.

1

2 The lower court may also restrict reimbursement to those
3 lawyers or law firms who pulled the laboring oar in
4 prosecuting the case. (*In re Fidelity/Micron*
5 *Securities*, supra, at 737-38) (emphasis added)).

6 Objectors' request is not unusual.

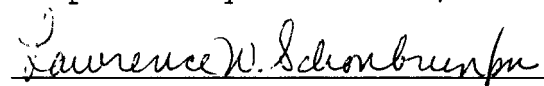
7 The court ... hereby authorizes payment PROVIDING
8 however any such requests for payment is accompanied by
9 supporting data in the form of bills, receipts,
10 invoices, cancelled checks, etc. (*Asbestos Class*
11 *Action, Georgine v. Amchem Prods. Inc., et al.*, No. CA-
12 93-0215, Dkt. No. 1505 (D. Pa., Order June 7, 1995)
13 (Weiner, J.) (emphasis added)).

14 The court does not award plaintiff's counsel costs at
15 this time because it does not have before it appropriate
16 supporting documentation from plaintiff's counsel
17 justifying these costs. (*Edelman v. PSI Assoc., Inc.*,
18 147 F.R.D. 217, 223 (C.D. Cal. 1993); emphasis added).

19 Objector has attached as Exhibit A a copy of the Order
20 recently issued by Judge Elaine E. Bucklo in *In re Synthroid*
21 *Marketing Litig.*, MDL 1182, No. 97-C-6017 (N.D. Ill., Eastern
22 Div.), regarding the need for backup data where class counsel seek
23 substantial cost reimbursement. In that case, the cost
24 reimbursement was approximately \$1.5 million. Objector has also
25 attached as Exhibit B the face sheet of the Appendix of Receipts
26 and Invoices of counsel in the *Synthroid Litigation*, in response
27 to the Court's order for backup data.

28 Dated: November 23, 2003

Respectfully submitted,



Lawrence W. Schonbrun
Attorney for plaintiff class member/
objector Brian Dabrowski

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Elaine E. Bucklo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	97 C 6017 - MDL 1182	DATE	10/2/2003
CASE TITLE	In Re: Synthroid Marketing		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

--

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due _____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] The law firms mentioned on the reverse side of this minute order have until 10/15/03 to provide the court with detailed data from which the court can determine what is claimed in terms of costs and expenses.

- (11) ☒ [For further detail see order on the reverse side of the original minute order.]

<input type="checkbox"/> No notices required, advised in open court.			Document Number
<input type="checkbox"/> No notices required		number of notices	
<input type="checkbox"/> Notices mailed by judge's staff		date docketed	
<input type="checkbox"/> Notified counsel by telephone.		docketing deputy initials	
<input checked="" type="checkbox"/> Docketing to mail notices		date mailed notice	
<input type="checkbox"/> Mail AO 450 form		mailing deputy initials	
<input type="checkbox"/> Copy to judge/magistrate judge.			
MPJ6	courtroom deputy's initials	Date/time received in central Clerk's Office	

I have considered the memoranda filed by settlement attorneys and objectors to the claim for reimbursement of costs and expenses in the amount of \$1,528,770. The expense reimbursement requests of some 60 law firms are included in plaintiffs' appendix. A few simply ask for a lump sum, without even any attempt to break down the amount requested into categories such as court fees, court reporters, copying costs. Most do this much, although there is not on a single request any breakdown beyond this point, nor any backup data. Counsel have included the affidavit from a client stating that the breakdown contained in most of the affidavits is sufficient on his bills. I do not know the amount of those bills, however. A monthly bill that included such a breakdown would probably be sufficient in most cases, although if it sought over \$100,000 in travel expenses, any responsible client would ask for an explanation. In this case, of course, the bill for expenses covers a number of years so it is possible that seemingly extraordinary expenses for one law firm are reasonable. But I cannot tell that from the data submitted to me. I am not going to ask for back up data or explanations for most of the expenses claimed, since at this point the value to the class in finding out just why each of the 60 or so firms claiming unreimbursed costs or expenses attributable to this litigation had such expenses is outweighed by the presumed desire of the class to finalize this litigation. However, a few firms have claimed what combined are hundreds of thousands of dollars in travel expenses, without any explanation of when they traveled, who traveled, why they traveled, or any breakdown of airfares, hotel expenses, or meals. Accordingly, Miller Faucher & Cafferty, Milberg Weiss Bershad Hynes & Lerach, Cohen Milstein Hausfeld & Toll (which provided no breakdown of its \$66,197 in claimed expenses at all, referring only to an Ex. C that was not included), Allan Kanner & Assoc., Lieff Cabraser Heimann & Bernstein, Sachnoff & Weaver (which also did not break down its claimed expenses of \$47,336), and Spector Roseman & Kodroff are given until October 15, 2003 to provide detailed data from which I can determine what is claimed (airfare, hotel, meal or whatever), who was traveling, what the trip was for (if a deposition, the name of the person deposed, and the date of the deposition; if a meeting, the names of the participants, etc.). Since counsel have now been given multiple opportunities over several years to provide sufficient information from which I can make this determination, this is the final opportunity that will be offered. (I note counsel's affidavit that "court personnel" at some time in the past rejected their attempts to file affidavits. I have not been able to identify any such court personnel. No one on my staff would refuse to allow someone to file material that was submitted for my review. In addition, the affidavits that counsel say they once were denied the right to file are the affidavits that I find insufficient.)

OCT - 7 2003

By _____



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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE SYNTHROID® MARKETING
LITIGATION

)
) No. 97 C 6017
)
)

This Document Relates To:

) MDL No. 1182
)
)

All Actions.

) Judge Elaine E. Bucklo
)
)

**APPENDIX OF RECEIPTS AND INVOICES
IN SUPPORT OF AFFIDAVIT OF JENNIFER W. SPRENGEL
IN RESPONSE TO COURT'S OCTOBER 2, 2003 MINUTE ORDER**

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